UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1116
8 November 1991

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE 1116th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 6 November 1991, at 10 a.m.

Chairman: Mr. POCAR
later: Mr. AGUILAR URBINA

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GE.91-18261/3890B

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Ecuador (CCPR/C/58/Add.9)

1. At the invitation of the Chairman, Mr. Ortiz Crespo, Mr. Medina López, Mr. Santos and Mr. Apunte Franco took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of Ecuador, whose high-level composition would undoubtedly ensure a fruitful dialogue with the Committee. Ecuador's third periodic report had been submitted on time, reflecting the long-standing cooperation between that country and the Committee. That cooperation was also personified by Mr. Prado Vallejo, who had held various offices in the Committee from its inception, including that of Chairman, and had made an extremely important contribution to the Committee's work.

3. Mr. ORTIZ CRESPO (Ecuador), introducing Ecuador's third periodic report (CCPR/C/58/Add.9), emphasized the great efforts made by his country in recent years to promote human rights. As in all countries, isolated violations occurred and occasionally certain authorities might in some way be involved, but the Government had acted forcefully and responsibly against those violations in order to improve the human rights situation that had prevailed under earlier Governments and to convince the Ecuadorian people that the exercise of human rights was one of the true values of civilization, a goal of society as a whole, and a consequence of Ecuador's own history of peace and of seeking to overcome conflicts inherent in a developing society.

4. Ecuador was a democracy whose citizens were participating to an increasing extent in all forms of political life. Its best feature was perhaps its internal peace and tranquillity. Every effort was made to ensure the broadest possible cooperation with all United Nations human rights bodies and other international institutions in accordance with Ecuador's obligations as a responsible member of the international community. The Government of President Borja, which had entered into office on 10 August 1988, was profoundly committed to the cause of human rights. In his presidential address on the occasion of the first anniversary of the Government, the President had emphasized his wish that his regime should be characterized by the most profound respect for human rights and that Ecuador should once again be the land of freedom, peace and understanding that it had been in the past.

5. On 10 August 1991, in his address to the National Congress and to the country on the occasion of the Government's third anniversary, the President had announced that that goal had been achieved. The climate of freedom that prevailed in Ecuador had become apparent and was recognized by even his most confirmed political opponents. Individuals were no longer prosecuted for their ideas, the media had been able to evolve in full freedom, the uses and even abuses of the democratic system were being respected and all areas of government action had been brought within the law. Furthermore, there was widespread international recognition that Ecuador had no political prisoners or exiles, that nobody was persecuted for religious or political reasons, that

opposition groups were able to exercise their full rights and that there was full freedom of association and the press as well as complete academic and electoral freedom. In addition, the Government respected and promoted the activities of non-governmental organizations concerned with the defence of human rights, whose autonomy was fully guaranteed.

6. That progress in public freedoms was reflected in the third periodic report. The feeling of insecurity that had prevailed in the period 1984-1988 and the climate of fear generated by the reprisals of a misguided earlier Government had been replaced by a tolerant democratic system and by the respectful, peaceful attitude on the part of the present Government.

7. One very important action taken by the Government had occurred after the submission of the third periodic report, and as a result of the tragic disappearance of two young Colombian brothers who had been living in Ecuador. The Government of President Borja had had a very thorough investigation made into the circumstances surrounding their disappearance as well as into the police force and the laws governing investigative procedures. An international commission had been set up, consisting of a personal representative of the United Nations Secretary-General, leading figures of the international community, representatives of the church and of the Latin American Association for Human Rights (ALDHU), the Attorney-General and an uncle of the two brothers. After many months of investigation, the commission had produced a report for the Government on the basis of which the Criminal Investigation Service had been dismantled and replaced by a judicial police body. In addition, a number of junior and senior police officers involved in the tragedy had been arrested.

8. That tragic episode had served to demonstrate the Government's concern to punish human rights violators. A further result had been the reform of the Code of Criminal Procedure and the Code of Execution of Sentences; the structure and scope of the investigating magistrature was also being changed, largely by eliminating their control over the provincial police. A new section of the Ministry of Justice had also been set up to oversee respect for human rights, and a department had been established to defend poor people in cases of human rights violations.

9. The new judicial police body consisted of 800 professionally qualified persons from various faculties of the country's universities. The fact that there had been some 5,000 applications for those posts demonstrated the people's confidence in the Government and the feasibility of having a police force which would not indulge in abusive practices. The isolated cases of human rights violations which still occurred were most likely due to the low cultural level of some members of the police force and the difficulties involved in changing their mentality of abuse and repression. The Government was nevertheless making every possible effort to improve matters and it was to be hoped that successive Governments would continue to maintain respect for human rights as a tradition in Ecuador.

10. Another important human rights development in recent years had been the dialogue with the indigenous communities. Just as the third periodic report was being submitted, the biggest uprising of indigenous peoples in Ecuador's

history had occurred, lasting for several days. Indians from six different provinces had rioted, blocked roads and occupied land. A dialogue initiated with the leaders of the Indian community had proved to be very fruitful: many of their claims reflected opposition not to the Ecuadorian Government but to the historical repression and discrimination practised against them. In-depth and far-reaching reforms had since been made, including the introduction of bilingual education and the donation of over 1 million hectares of land.

11. Another important change was the establishment within the Ministry of Foreign Affairs of the Office of Director-General for Human Rights, a high-level body which had benefited from United Nations assistance. One of its achievements had been specific policy changes with regard to social rehabilitation, including the reconstruction of the country's detention centres with their sordid and degrading conditions. Educational and productive programmes had been introduced and theatre and music festivals had been held in the prisons, which had been widely reported in the media, including television. An agreement allowing the Red Cross to interview prisoners had been concluded and training courses in human rights for members of the armed forces and the police had been instituted. In addition, a comprehensive review was to be conducted of criminal legislation and procedures in Ecuador, and technical assistance had been provided for the purpose. Arrangements had also been made with a commission of non-governmental organizations, chaired by Mr. Prado Vallejo, which would advise on ways in which any outstanding human rights problems might be tackled.

12. Ecuador was the second smallest country in Latin America and had a large migratory population. It also had a reputation for peace and for its lack of the guerrilla activity that characterized other Latin American countries. There had been some guerrilla activity in response to the repression exercised by a previous Government, but the present Government had concluded a peace agreement with the group, which had subsequently disarmed and, two weeks previously, had decided to disband. That was another example of what could be achieved by peace and dialogue.

13. In the international field, the President had supported regional and subregional action to promote human rights, notably within the Andean Pact and other bodies including the Rio Group, of which Ecuador was a member.

14. The CHAIRMAN thanked the representative of Ecuador for his introduction and invited him to reply to the questions set forth in the list of issues, taking sections I and II together.

I. Constitutional and legal framework within which the Covenant is implemented (art. 2 (2) and (3))

(a) With reference to the establishment of the Ad Hoc Commission on Human Rights, please clarify its constitutional standing and provide examples of its work. What action has been taken in follow-up of its proposals?

(b) Please provide examples of cases, if any, in which offences against constitutional freedoms have been punished (para. 27 of the report).

(c) What follow-up action has been taken as a result of views adopted by the Committee under the Optional Protocol with regard to Ecuador?

II. State of emergency (art. 4)

(a) Please explain whether the reasons for declaring a state of emergency referred to in paragraphs 43 and 44 of the report are in accordance with article 4 of the Covenant.

(b) What rights have been derogated from during the states of emergency mentioned in paragraph 43 of the report? Please also provide information on remedies available during states of emergency.

(c) Please provide information on the declaration referred to in paragraph 45 of the report. What action has been taken as a result of the recommendation by the Court of Constitutional Guarantees?

15. Mr. ORTIZ CRESPO (Ecuador), replying to question I (a), said that the Ad Hoc Commission on Human Rights had been established under rule 119 of the rules of procedure of the National Congress in response to requests from deputies over a number of years. Its term of office was 12 months, the latest Commission having been operational since 14 October 1991. Its functions were largely political and were detailed in paragraph 31 of the report. Its most important task to date had concerned the disappearance of the Colombian brothers in the course of which it had ably demonstrated its usefulness and received a good deal of public support. As a political body it could be very effective, if properly used, in following up human rights cases.

16. In response to question I (b), he explained that there were various remedies available for violations of constitutional freedoms. Cases could be brought before a judge in the ordinary courts, or before the Court of Constitutional Guarantees which defended the rights and freedoms enshrined in the Constitution, and whose members came from the executive, the judiciary and the private sector and were appointed by the National Congress. Those various channels could be used either by individuals or by human rights bodies. It should be noted, however, that there had frequently been problems in pursuing some of those procedures, particularly judicial procedures. They were often extremely slow and sometimes simply petered out without reaching a conclusion. Nevertheless, the Ecuadorian Government and the State were anxious to encourage proceedings for offences against constitutional freedoms. In recent months there had been four convictions against members of the police for offences against constitutional freedoms, which marked considerable progress in the attitude of the Government and of Ecuadorian society. As he had stated in his introduction, that attitude had been most clearly demonstrated in the case involving the disappearance of the Colombian brothers.

17. Lastly, in the context of reforms, the President and the Ministry of the Interior had initiated a wide-ranging study on the functions of the police, focusing inter alia on its inability to take action for violations of constitutional freedoms against its own members. Under Order No. 852A, the Ministry of the Interior had instructed the Deputy Minister of Justice and the head of the police force to examine all accusations of abuse of power or corruption made against the police in the past eight years and to study its powers. Furthermore, in Decree No. 2693 the President had stipulated that a high-level commission should within 45 days submit a draft set of rules for the police as well as other legal instruments relating to their operation and a full draft reform of the laws governing their functions. Shortly before the deadline for the study's submission, the commission had requested a 20-day extension, and as a result the study was expected to be submitted in early November 1991.

18. With regard to question I (c), he said that in its observations on the second periodic report of Ecuador, the Committee had shown itself to be mainly concerned with Ecuador's constitutional situation in 1988, and in particular with the extraordinary deterioration of relationships between the three branches of Government. Since that date there had been a substantial improvement in that respect and mutual confidence had been fully restored. The deterioration had been attributable to the previous Government of President Febres Cordero, which had constantly been at loggerheads with the other branches of the State. Since 1988 the situation had improved enormously and normal constitutional relationships between the three branches of Government prevailed.

19. Turning to section II (a), he said that the reasons for declaring a state of emergency referred to in paragraphs 43 and 44 of the report were indeed in accordance with article 4 of the Covenant. However, he referred members of the Committee to paragraph 45 of the report, which mentioned the statement by the Court of Constitutional Guarantees that one such declaration of a state of emergency by the previous Government, in May 1988, had not been justified. He pointed out that whereas the previous Government had resorted to the state of emergency on a number of occasions, the present Government had declared a state of emergency only once, as indicated in paragraph 43 of the periodic report. On that occasion, the state of emergency had been introduced in response to industrial action by petroleum workers which had entailed dramatic economic consequences for Ecuador: the strike had deprived the country of 60 per cent of its foreign currency earnings, and the workers, stirred up by activists, had occupied buildings, blocked roads and attempted to cut off the vital trans-Andean oil pipeline to press their claim for inordinate compensation for the change in ownership of the petroleum industry. The state of emergency had lasted barely two weeks, and Congress had been duly informed, in accordance with the Constitution. In respect of section II (c), he pointed out that the fact that the present Government had only once declared a state of emergency was an illustration of its desire to implement the recommendation by the Court of Constitutional Guarantees and reflected the commitment of that Government to dialogue rather than confrontation. Regarding section II (b), he informed the Committee that article 78 (n) of the Constitution stipulated which rights could be suspended under a state of emergency and what powers could be assumed by the President under such circumstances. He pointed out that not all the powers provided for in that article were always assumed by

the President under a state of emergency. When the present Government had introduced the state of emergency during the petroleum workers' strike, it had suspended freedom of movement and the right of assembly within the petroleum installations. It had also been necessary to suspend the constitutional guarantees relating to the right to work, in order to protect the petroleum installations which had been under threat, although again the suspension had been circumscribed to that area alone. Under the states of emergency introduced by the previous Government, the same rights had been suspended, although on one occasion the Government had attempted to restrict freedom of the press by introducing prior censorship. However, the attempt had been unsuccessful on account of the unanimous opposition of the Ecuadorian press. Lastly, he said that the Court of Constitutional Guarantees could decide whether a declaration of a state of emergency was valid, and the National Congress could even revoke a state of emergency, pursuant to article 78 of the Constitution, although it had never done so.

20. Mr. Aguilar Urbina took the Chair.

21. Mr. SADI said that a visit he had made to Ecuador 10 years previously as Chairman of the Commission on Human Rights had left him with a vivid impression of Ecuador's commitment to human rights, which was personified by Mr. Prado Vallejo, who had been a pillar of the Human Rights Committee for many years.

22. Although Ecuador was a bastion of democracy and human rights in Latin America, isolated problems still persisted. He himself was from a developing country and would be interested to know whether the persistence of such pockets of resistance to full compliance with human rights could be attributed to cultural, social, economic or other factors.

23. With reference to the status of the Covenant under domestic legislation, he took it that it was reflected in internal law, as seemed to be indicated by paragraph 24 of the report, according to which Ecuadorians could resort either to national courts or bodies to lodge complaints, or to the relevant international bodies. In that connection, he asked whether any statistics were available to reflect what percentage of complaints were submitted to the Inter-American Commission on Human Rights and to the Human Rights Committee. He also asked whether sufficient publicity had been given to the Covenant in Ecuador, or whether the lion's share of cases was referred to the Inter-American Commission on Human Rights. He took it that the Court of Constitutional Guarantees was basically seized with constitutional issues, and asked whether citizens could invoke the Covenant before the Court and whether there had been any cases in which persons had brought violations of the Covenant before the Court.

24. The Ad Hoc Commission on Human Rights possessed sweeping powers. However, he wondered how effective those powers actually were, and whether there were any examples of cases in which it had caused new legislation to be introduced and had had an impact on law and on practice. He noted that the state of emergency had only been introduced on a few occasions, and asked whether on such occasions there was any provision under Ecuadorian law for informing the Secretary-General of the United Nations and the States parties to the

Covenant, as required by its article 4. Lastly, he asked what had been the legal effects of the recommendation made by the Court of Constitutional Guarantees, referred to in paragraph 45 of the report. In particular, the reference to a "recommendation" appeared to indicate that the Court's findings were not binding, and he asked for clarification of that point.

25. Mr. HERNDL thanked the Ecuadorian delegation for its introduction to the report of Ecuador, which had answered a number of questions he had initially intended to put. He expressed his own appreciation of the valuable contribution made to the work of the Committee by Mr. Prado Vallejo, who was one of its pillars.

26. With regard to the report, he wished to raise two rather theoretical points, of particular interest to him as a lawyer. Paragraph 4 of the second periodic report of Ecuador said that the applicability of the Covenant as a binding legal norm was guaranteed by its incorporation into domestic law, since the Ecuadorian legal system gave precedence first to the Constitution, then to legislation deriving from treaties and other international instruments ratified by the Government and, lastly, to domestic laws, an assertion that was repeated in paragraph 9 of the third periodic report. He asked for clarification as to the exact position of the Covenant within that hierarchy of norms, and in particular if it was part of the law of the land. Paragraph 9 of the third periodic report mentioned "legislation deriving from treaties" and he took it that special laws were still required to bring the Covenant into effect.

27. Secondly, he shared Mr. Sadi's concern about the exact status of the Court of Constitutional Guarantees, as paragraph 44 of the report appeared to indicate that its functions were merely advisory. He asked whether such was actually the case and whether the Court possessed any real jurisdictional authority.

28. Mr. MAVROMMATIS said that he valued the opportunity to continue the dialogue with Ecuador and greatly appreciated the contribution made to the work of the Committee by Mr. Prado Vallejo, who in the course of the past 15 years had come to epitomize the Committee's struggle to implement human rights.

29. Ecuador had for many years possessed the necessary infrastructure to implement human rights: it had acceded to the basic international human rights instruments, and it had a constitution and the necessary domestic legislation to enforce human rights. However, human rights violations continued, although there had been marked progress under the new Government, which had taken many important steps, in particular by investigating the Restrepo case and deciding to disband the Criminal Investigation Service. However, it was still necessary to ensure in practical terms, through legislation and surveillance, that human rights were complied with, and to investigate and compensate for any violations of human rights norms, including those which had occurred under the previous Government, as Governments represented the continuity of State responsibility.

30. He was impressed by the role assigned to the Ad Hoc Commission on Human Rights of the National Congress, and in particular by its role in monitoring respect for human rights throughout the world. He asked whether the Commission would subscribe to the view that there should be linkage between humanitarian aid or aid in general and the human rights situation in a particular country, as had recently been illustrated in the case of Haiti.

31. He did not feel that the delegation had answered question I (c) of the list of issues, concerning follow-up action taken as a result of views adopted by the Committee under the Optional Protocol with regard to Ecuador. The delegation's reply had concerned the follow-up of the concluding observations made by the Committee after its consideration of the second periodic report of Ecuador, whereas the views referred to in section I (c) were those adopted by the Committee in respect of communications submitted by individuals from Ecuador under the Optional Protocol. He asked for further information on that point.

32. Lastly, he had formed the impression that the constitutional provisions relating to the state of emergency made it easy to resort to a state of emergency in order to deal with labour unrest. He felt that the circumstances in which it was possible to proclaim a state of emergency should be strictly defined by law. In doing so, it might also be necessary to introduce complementary legislation restricting, for example, the right to strike and to provide for arbitration as a means of settling labour disputes.

33. Miss CHANET welcomed the high-level delegation and expressed appreciation to Mr. Prado Vallejo who was known for his human qualities, kindness and respect for the views of his colleagues. She also appreciated the timely submission of the third periodic report of Ecuador, from which she had noted the progress made in the protection and promotion of human rights.

34. She was concerned, however, to note the statement in paragraph 54 of the report that the serious practices referred to in paragraph 53 could not automatically be stopped. It was further indicated in paragraph 86 that violations of article 11 of the Covenant had probably occurred because of the low cultural level of lower-ranking officers in the national police, and ignorance of the relevant laws. The tone of the two paragraphs in question seemed to imply that efforts to put an end to the violations had been given up. The public authorities should take systematic action against such abuses with a view to eliminating them completely. Following the dissolution of the Criminal Investigation Service, she was convinced that the national police would be in a position to achieve that objective. It had been stated that the Ad Hoc Commission on Human Rights was empowered to institute criminal proceedings against any officials who ordered or committed human rights violations. She wished to know how many complaints had been submitted to the Commission and how many had led to such proceedings. Had the four convictions to which the delegation had referred been criminal convictions and had they followed action by the Ad Hoc Commission or were they isolated cases submitted by victims?

35. There was some ambiguity in the wording of article 141 of the Constitution, from which it could appear that decisions of the Court of Constitutional Guarantees did not apply to the State authorities, although the point was not clear. Nor was it clear whether the Court had decisive powers or whether it acted only as an advisory body.

36. With respect to the state of emergency, it did not appear from paragraphs 41-46 of the report that the State party had informed the Secretary-General of the United Nations of its derogation during the period 1988-1990, as required by article 4 (3) of the Covenant. She agreed with Mr. Mavrommatis that the declaration of a state of emergency on account of a strike was too strong a measure, particularly when the strike was limited.

37. It had been stated that the suspension of constitutional guarantees had affected certain people only. Article 4 of the Covenant stipulated that the measures taken in time of public emergency must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. She wished to know what rights had been suspended during the strike, and against whom the measures had been applied.

38. Mr. El SHAFEI welcomed the delegation of Ecuador and expressed his appreciation to Mr. Prado Vallejo, from whose guidance and competence he had benefited greatly.

39. The report was straightforward and generally succinct, but some rather sweeping statements were made in some paragraphs, such as the statement that Ecuador had acceded to all international human rights instruments, which was surely not entirely true.

40. He associated himself with Mr. Herndl's point concerning the legal status of the Covenant under domestic legislation, which was not explained precisely in paragraph 24 of the report. He would appreciate further clarification.

41. Article 4 of the Covenant related strictly to times of public emergency which threatened the life of the nation, and a labour strike could not be said to pose such a threat. There had, however, been a number of improvements in Ecuador, and he welcomed the introduction of the legal and constitutional reforms that had been described.

42. It was stated in paragraph 27 that the Penal Code punished any acts committed against various rights, including the right to work. Although article 31 (b) of the Constitution provided that the State must promote the elimination of unemployment and underemployment, there was no provision in that instrument for any punishment in the event of an infringement of the right to work. He asked whether there was an obligation to employ any adult available in the market and, if not, how the report could indicate that the right to work was guaranteed.

43. Some of the questions in sections I and II of the list of issues, such as the action taken in follow-up of the proposals of the Ad Hoc Commission on Human Rights, had remained unanswered. The establishment of that Commission

was to be welcomed, but its recommendations would have to be enforced by the executive authority, and he would welcome any example of a case in which that had been done.

44. Mr. WENNERGREN welcomed the delegation of Ecuador, the report and the introductory comments, which had greatly helped him to understand the developments that had taken place. He also appreciated the privilege of working with Mr. Prado Vallejo, whose contribution to the Committee's work had been of the utmost value.

45. In connection with section II (b) of the list of issues, the representative of Ecuador had drawn attention to article 78 (n) of the Constitution. Article 4 (2) of the Covenant stated that there could be no derogation from articles 6, 7, 8 (1) and (2), 11, 15, 16 or 18; but the rights to which there could be no derogation under article 78 (g) of the Constitution did not include all those prohibited derogations. He would welcome the delegation's comments on the apparent discrepancy between article 4 of the Covenant and article 78 of the Constitution.

46. Mr. LALLAH observed that the third periodic report of Ecuador was vastly superior to the second report, and he looked forward to hearing the delegation's comments in the context of the new order in Ecuador. He joined in expressing appreciation to the Government for Mr. Prado Vallejo's valued contribution over the past 15 years and for his great qualities of heart and mind.

47. A number of questions had been asked about the legal structure and framework within which the Covenant was implemented. It was important to note that the Government had undertaken a number of reforms, but the Committee had learned that violations of the worst kind nevertheless occurred. Something was therefore obviously wrong despite the Government's good intentions. What was needed was a human rights culture not only to remedy wrongs committed but to produce a situation in which violations did not occur and no remedies were needed. It was disturbing to note from the report that the police had violated a number of rights. It was stated in paragraph 86 that such violations had occurred mainly in rural communities and small towns and that they were probably due to the low cultural level of lower-ranking officers; but some had also occurred among members of the Criminal Investigation Service, which could not possibly consist only of lower-grade officials. Something needed to be done to inculcate human rights culture in officials who should be responsible for protecting people - particularly people at the grass-roots level, whose need for protection was all the greater. In article 2 (3) of the Covenant, it was expressly stated that each State party to the Covenant undertook to ensure that any person whose rights or freedoms as therein recognized were violated would have an effective remedy, notwithstanding that the violation had been committed by persons acting in an official capacity. He urged the Government to be vigilant in that regard. Constant investigation was needed and efforts should be made to ensure that the observance of human rights became habitual for those responsible for applying the law and protecting people.

48. The delegation had stated that the Criminal Investigation Service had been disbanded. He would be interested to know what had become of its former officials, since such services often reappeared in a new form. Might they, for example, have joined the new judicial investigating service? Bad habits had a way of lingering on, and it was important to ensure that the former officials did not occupy positions of authority where they could transgress again.

49. The report gave cause for hope in many areas, which the Committee would no doubt examine during its further consideration of the report.

50. Mr. FODOR welcomed the delegation of Ecuador and expressed his gratitude to the State party for providing the Committee with the services of Mr. Prado Vallejo, whose contribution to its work had been extremely valuable over the many years of his membership. The third periodic report of Ecuador was well-drafted and succinct and provided a good basis for a useful dialogue.

51. Turning to section I (c) of the list of issues concerning the follow-up action taken as a result of views adopted by the Committee under the Optional Protocol, he recalled the opinion it had adopted in the Bolaños case, in which it had called upon the State party to take effective measures to remedy the violations suffered by Mr. Bolaños, to release him pending the outcome of the criminal proceedings against him and to grant him compensation pursuant to article 9 (5) of the Covenant. The State party had informed the Committee that Mr. Bolaños had been released in response to the Committee's request and that the Government had endeavoured to remedy the violations against him by helping him to find employment. That was commendable, but, from a general standpoint, he wished to know what procedure was applicable in such cases; how compensation could be obtained; whether the ordinary courts had jurisdiction in granting such compensation or whether an administrative authority such as the Ministry of Justice was responsible; and whether the procedure was ex officio or whether the victim or author of the communication concerned had to initiate proceedings before the courts in order to obtain such compensation. Specifically, he wished to know whether Mr. Bolaños had been granted compensation, since the note from the State party had made no reference to that question.

52. Mr. Pocar resumed the Chair.

53. Mr. AGUILAR URBINA welcomed the delegation of Ecuador and thanked the Government for having three times nominated Mr. Prado Vallejo to serve on the Committee. His presence had been an inspiration.

54. It was stated in paragraph 31 (b), of the report that the Ad Hoc Commission on Human Rights was responsible for determination of responsibility in cases of human rights violations. The head of delegation had explained that that body was a special legislative commission with political functions; he himself had certain misgivings on that point. He asked how its operations were viewed in relation to article 14 of the Covenant. Moreover the representative of Ecuador might elaborate on the Commission's role in following up complaints made against Ecuadorian international bodies for violations of human rights and monitoring respect for human rights throughout

the world by promoting the defence of human rights in inter-parliamentary bodies and calling for a statement by the National Congress in the most serious cases, as referred to in paragraph 31 (f) and (g). Those functions were of the greatest interest, particularly where the Optional Protocol was concerned. He asked for more information on the powers of the Ad Hoc Commission and on the remedies offered by that Commission to a victim in relation to the Optional Protocol.

55. Mr. ORTIZ CRESPO (Ecuador) thanked members of the Committee for their kind remarks. His delegation had taken due note of the unanimous statements about Mr. Prado Vallejo's qualities, which it would convey to its Government.

56. All the members who had spoken had referred to the question of the Ad Hoc Commission on Human Rights, and reference had also been made to section I (c) of the list of issues concerning follow-up action taken as a result of views adopted by the Committee under the Optional Protocol. The Ad Hoc Commission was a multi-party body in which both the Government and the opposition were represented. It had only very recently been reconstituted and had perhaps not yet begun to work efficiently. As a legislative commission with a political character it might not be the best kind of mechanism to initiate proceedings in cases of human rights violations. It was, unfortunately, sometimes used by political parties to disseminate their own policies and denigrate those of the Government. Its establishment had nevertheless been a valuable initiative on the part of the National Congress. The current Minister of the Interior, who was responsible for the national police, was a member of the Inter-American Commission on Human Rights and a former president of the Ad hoc Commission on Human Rights, and was therefore familiar with the workings of that body and the means by which it could influence public opinion and involve the communications media.

57. Unfortunately he had no details of the number of complaints the Ad Hoc Commission on Human Rights had received, a figure which Miss Chanet had requested. In general, some dozens of complaints were submitted not only to the Commission but also to non-governmental organizations and some of them were also dealt with by the Court of Constitutional Guarantees. The Commission was thus not the only body concerned in such cases. In reply to a further question by Miss Chanet, he said that the Commission had played no part in a case leading to conviction of police officers, which had resulted from legal proceedings within the national police.

58. In answer to Mr. Sadi's question on new legislation resulting from the work of the Ad Hoc Commission, he mentioned the support it had given during the period 1988-1990 to some of the most important changes that the Government had made to the Civil Code to eliminate the discrimination against women that existed in Ecuadorian law. Although a Standing Committee of the National Congress had played the leading role in drafting those amendments, the Commission had served in an advisory capacity and had also carried out a similar function with respect to changes in the Code of Criminal Procedure and the Code of Execution of Sentences.

59. With respect to question I (c) of the list of issues, he would reply to Mr. Mavrommatis that his response had covered the broader subject of the comments made by the Committee in relation to the remarkable deterioration

which had occurred during the previous Government in the relations between the executive, the legislature and the judiciary, drawing attention to the fact that the situation was no longer the same. He had not referred to the two individual cases of concern to the Committee since they had both been the subject of official notes from the Government of Ecuador to the Committee.

60. In the case to which Mr. Fodor had referred, Mr. Bolaños, who had been unjustly charged with a crime and detained for many years without being sentenced, had now been released. That release had been achieved through the efforts of a free legal aid agency established at the University of Quito, which operated with government approval. The Bolaños case had received wide press coverage in Ecuador, where it had been regarded as a symbol of all that had been wrong with Ecuadorian justice. On Mr. Bolaños' release, the Government had arranged employment for him and helped him rebuild his life although, since Ecuador did not yet have the legal machinery to provide compensation for victims of unlawful arrest or detention, he had received no compensation. However, the principle of entitlement to compensation did exist in the Constitution. The Government would be including provisions for compensation in the measures for reform of the Penal Code which it would be submitting to the National Congress.

61. In the case of Mr. Cañon García, a Colombian citizen, the Government in its official communication to the Committee had recognized that the procedures under Ecuadorian law for expulsion of aliens had not been complied with. The Ecuador section of Interpol, acting at the request of the United States section, had deported Mr. García, who was suspected of drug trafficking, and he was now in a United States prison. That lamentable lack of attention to proper legal procedures had no doubt been caused by an excess of zeal in pursuing drug traffickers. The Ecuadorian authorities had since given specific instructions with regard to expulsion of aliens to its Interpol section and to other police bodies and would make every effort to ensure that such cases would not recur. It was appropriate, however, to reflect on the threat that drug trafficking posed to Ecuador, which lay between Peru and Colombia, the two main producers of coca and cocaine. Ecuador had until recently been free of drug trafficking since, for historical reasons, it had no tradition of coca cultivation or culture of its use among its indigenous population. Unfortunately, traffickers shipping cocaine to the United States and Europe had begun to find it a relatively easy route of transit since there was little monitoring of the movement of drugs in Ecuador. Such monitoring was, however, now being carried out in the parts of the country most affected.

62. Mr. MEDINA LOPEZ (Ecuador) said that the Ad Hoc Commission on Human Rights of the National Congress was a body dealing with possible violations of human rights from the political, not the judicial standpoint. Its functions were set out in paragraph 31 (a)-(g) of his Government's report. Other measures had also been taken by the Government (para. 55 of the report) to ensure continuation of the investigation of the disappearance of the Restrepo brothers and any other similar cases that might have occurred. Furthermore, under a government decree, the Minister of the Interior had been instructed to adopt the necessary measures required to prevent human rights violations in police investigations. Another measure had been the

establishment of a section of the Ministry of Justice whose functions included dealing with complaints of violations of the human rights and constitutional guarantees in force in Ecuador.

63. To reply to a point raised by Mr. Sadi, he said that a failure by any official to implement a decision of the Court of Constitutional Guarantees was punishable under the terms set out in the Penal Code. In serious cases a sentence of deprivation of civil rights could be passed. The Court of Constitutional Guarantees was entrusted, among other things, with ensuring the implementation of human rights in Ecuador and its decisions were binding.

64. To reply to Mr. Herndl's question, the provisions of the Covenant, under the Constitution, were considered as part of national law although they did not have the same force as the Constitution itself. The provisions of the Covenant were guaranteed explicitly in article 19 of the Constitution, while its article 44 stated the general rule relating to all international instruments in force in Ecuador.

65. With regard to compensation, a point Mr. Fodor had raised, the Constitution stipulated that anyone suffering violation of his rights was entitled to compensation; however, relevant legislation implementing those guarantees had not yet been developed for all infringements of human rights. In Ecuador, entitlement to compensation and the amount of that compensation had to be decided by a court of law.

66. Mr. ORTIZ CRESPO (Ecuador) said that there were still instances of human rights violations in Ecuador, as Mr. Sadi had pointed out. They had, however, as was the case in other countries too, to be regarded as arising from factors such as economic problems, social organization and culture and were not necessarily always an accompaniment of underdevelopment. The essential point for the purposes of the Committee was that active efforts were being made to solve those problems, to continue to prosecute those violating human rights and to foster a proper attitude towards human rights. Mr. Sadi had also asked what proportion of cases involving Ecuadorian citizens had been brought before the Committee and before the Inter-American Commission on Human Rights. Exact figures were not available but in general a higher proportion of representations were made to the Human Rights Committee than to the Inter-American Commission on Human Rights since the Committee had been longer in operation, was better known and was more effective in making Governments aware of human rights violations. However, since an Ecuadorian expert had recently been elected to the Inter-American Commission on Human Rights, contacts between Ecuador and that Commission would no doubt increase.

67. To answer a further question from Mr. Sadi, a considerable number of complaints against particular authorities or policies of the Government of Ecuador were brought before the Court of Constitutional Guarantees. One of the functions of the Court was to deal with such complaints. It was also mandated to deal with complaints of unfair dismissal for expression of opinions critical of the Government, which were also subject to the administrative procedures concerned with labour matters.

The meeting rose at 1 p.m.